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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,632	06/30/2005	Andrew J.S. Dawood	21547-00298-US1	3407

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EXAMINER

BUMGARNER, MELBA N

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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11/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/506,632

Applicant(s)

DAWOOD, ANDREW J.S.

Examiner

Melba Bumgarner

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3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-9 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) 2, 12 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-9,13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1, 3, 4, 6-9, 13, and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims appear to recite part of the human body alternatively in combination with the structure of the claimed invention, "said orthodontic fixture is connected to an appliance configured to facilitate distracting the jaw bone and supported by one of at least teeth and adjacent static fixtures." It has been held that a claim directed to or including within its scope, a human being will not be considered to be patentable subject matter under 35 USC 101. The grant of limited, but exclusive property right in a human being is prohibited by the Constitution. *In re Wakefield*, 422 F.2d 897, 164 USPQ 636 (CCPA 1970). Applicant needs to clearly state using inferential language that the human anatomy is not claimed. For examination purposes, the claims will be considered as if such limitations involving the combination with a human were not present.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3, 4, 6, and 7 are rejected under 35 U.S.C. 102(e) as anticipated by Tramonte (2002/0081553). Tramonte discloses a fixture comprising a first externally threaded part 2 for insertion into a prepared site in the jaw bone, a second externally threaded part 3 to which pressure may be applied by means of an internally threaded element 4, a smooth, non-threaded, alignment section 9 at an apex of the fixture, the fixture is connected to an appliance being supported by adjacent static fixture and the second part protrudes through the appliance. Patentable weight is not given to the intended use of the fixture; however, the fixture is capable of being connected to an appliance configured to facilitate distraction. The second externally threaded part may be acted upon by the internally threaded element and has a flattened aspect 5. The fixture is provided with a polished section which forms a collar 5 having non-round cross-section. Tramonte shows the fixture is designed for connection to prostheses.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 4, and 6-9 are rejected under 35 U.S.C. 102(e) as anticipated by Tramonte (2002/0081553) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tramonte in view of Kirsch et al. (DE19848599). Tramonte discloses a fixture that shows the limitations as described above; however, Tramonte does not explicitly show the fixture connected to the appliance to facilitate distracting the jaw bone. Kirsch et al. teach a fixture connected to a jaw bone distraction appliance. It would have been obvious to one having ordinary skill in the art at

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the time the invention was made to modify the fixture of Tramonte to include the appliance of Kirsch et al. in order to distract the jaw bone. Tramonte discloses a dental fixture that shows the limitations as described above and a tapered body having deeply biting threads on the first part and machine thread on the second part; however, Tramonte does not show the thread on the second externally threaded part to be metric machine thread. It would have been an obvious matter of choice to one of ordinary skill in the art as to whether the threading of the second threaded part is dimensioned in metric system. Tramonte shows an aperture 8 within its body and the aperture is capable of having a wire pass through. It would have been an obvious matter of choice to one of ordinary skill in the art as to the specific shape of the aperture.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tramonte in view of Kvarnstrom et al. (6,312,259). Tramonte discloses a dental fixture that shows the limitations as described above; however, Tramonte does not show the fixture having body with a square or rectangular aperture. Kvarnstrom et al. teach a dental fixture having body with an aperture 18 of any configuration through which wire may be passed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fixture of Tramonte to have the aperture of Kvarnstrom et al. in order to be able to secure structure to the fixture in view of Kvarnstrom et al. It would have been obvious to one of ordinary skill in the art as to the specific shape of the aperture as Kvarnstrom et al. teach the aperture to be of any configuration.

8. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tramonte or Tramonte in view of Kirsch and further in view of Hall (2003/0158554). Tramonte discloses a fixture that shows the limitations as described above; however, Tramonte does not show the fixture having surface treatment. Hall teaches a fixture having surface treatment of a

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roughening process and portions of rougher surface and relatively smooth. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fixture of Tramonte to have the surface treatment of Hall in order to apply different textured surfaces to different types of bone encountered in dental situations in view of Hall

Specification

9. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

10. The disclosure is objected to because of the following informalities: it is suggested that the specification include section headings and it does not contain a brief description of the drawings. Appropriate correction is required.

Response to Arguments

11. Applicant's arguments filed October 11, 2007 have been fully considered but they are not persuasive. With respect to rejection of claims under 35 USC 101, claim 1 still positively recited parts of the human body (teeth) in the alternative language. It is believed that the prior art show the structural limitations of the alignment section as claimed. To further comment on the intended use of the fixture, it is noted that the specification states "[t]he fixture described herein is intended as a multipurpose anchor." The present invention as described in the claims includes functioning as an anchor for dental prostheses.

Conclusion

12. Any inquiry concerning this communication from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melba Bumgarner
Primary Examiner